

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY FIFTH DAY OF OCTOBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE BILAL NAZKI

and

THE HON'BLE MR JUSTICE S.ANANDA REDDY

WRIT PETITION NO : 11674 of 2004

Between:

K.Vidyasagar Rao, S/o Papa Rao,
Matpally Village, Karimnagar District.

..... PETITIONER

AND

- 1 The Superintending Engineer, Panchayat Raj Circle, Karimnagar
- 2 The Executive Engineer, Panchayat Raj Circle, Karimnagar
- 3 The Pay and Accounts Officer, Karimnagar

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a Writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the respondent that the sales tax deductible from the payments of the petitioner herein to a tune of Rs.6,49,204/- instead of collecting Rs.3,33,043/- and balance kept in deposit with respondent No.3 is contrary to the Sec.17-I(i)(ii) of APGST Rules, and opposed to Article 14,19 and 21 of Constitution of India is illegal and void and consequently to direct the respondents to deduction of tax as specified I category (ii) of Rule 17(1)(i) of the APGST rules and direct the respondents to refund the excess amount of sales tax to a tune of Rs.3,16,161/- deducted from the payment of petitioner herein, which was kept in deposit with the respondent No.3 over and above the permissible deduction contemplated under category (ii) of rule 17(I)(i).

Counsel for the Petitioner:MR.MUMMANENI.SRINIVASA RAO

Counsel for the Respondents: GP FOR PANCHAYAT RAJ & RURAL DEV.

The Court made the following

ORDER (Per the Hon'ble Sri Justice Bilal Nazki):

Heard learned counsel for the parties.

The petitioner's grievance is that when he was executing a contract, 4 per cent of the turnover was deducted by way of sales tax. 2 per cent of it has been credited to the Department of Commercial Tax, whereas 2 per cent has been retained by the respondents. A direction is sought that the 2 per cent amount retained by the respondent-Department should be returned to the petitioner.

We fail to understand how the respondents retained the 2 per cent amount deducted as tax at source. Learned counsel for the petitioner submits that the tax had to be collected at 2 per cent and only by way of an amendment, the rate of tax was enhanced to 4 per cent and that amendment came into force on 07-08-2000. Since the work had been entrusted to him before 07-08-2000, therefore, he was not liable to pay tax at the rate of 4 per cent. He relies on judgment of this Court in W.P. No.21500 of 2001. In this case, controversy was almost similar, but there was a finding of the Court that the transaction and execution of work had taken place before the amendment. Whereas, in the present case, on the basis of material before us, we will not be in a position to give such a finding. Even in the better affidavit filed by the petitioner, it is revealed that all the bills were passed after 31st March, 2001, i.e., subsequent to the amendment. Therefore, if the bills had been passed after the amendment and work was executed after the amendment, whether the amendment

would apply or it would not apply as the agreement had been entered into before the date of amendment, would be questions, which will have to be decided by the authorities of the Commercial Tax Department, when a proper assessment is made. But, at the same time, we are of the view that the respondents have no right to retain the amounts, which they have collected by way of sales tax. Therefore, respondents are directed to remit the amounts retained by them to the Commercial Tax Department, and the petitioner shall be free to approach the Commercial Tax Department authorities, for refund, if so advised.

We make it clear that we have not decided the issue whether the petitioner had to pay tax at 2 per cent or 4 per cent rate.

The writ petition is accordingly disposed of. No order as to costs.

(BILAL NAZKI, J)

25th October, 2004.

(S.ANANDA REDDY, J)

vrn

To

- 1 The Superintending Engineer, Panchayat Raj Circle, Karimnagar
- 2 The Executive Engineer, Panchayat Raj Circle, Karimnagar
- 3 The Pay and Accounts Officer, Karimnagar
- 4 Two C.Cs to the Government Pleader for Panchayat Raj & Rural

Development, High Court of A.P, Hyderabad (OUT)

5 Two C.D copies